

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:

Date: June 26, 2007

Jennie CHING, et al.

Confirmation No.: 6651

Serial No.: 09/524,091

Group Art Unit: 2623

Filed: March 13, 2000

Examiner: Andrew Y. Koenig

Title: METHOD AND SYSTEM FOR PROVIDING TUNABLE
PARAMETERS TO CONTROL DISTRIBUTION IN A DIGITAL
MEDIA DISTRIBUTION

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

(1) Real Party in Interest

The real party in interest is International Business Machines Corporation by virtue of an assignment from the inventors recorded in the U.S. Patent Office on March 13, 2000, reel no. 010673, frame no. 0358.

(2) Related Appeals and Interferences

There are no appeals, interferences, or judicial proceedings known to Appellant, the Appellant's legal representative, or Assignee, which may be related to, directly affect, be directly affected by, or have a bearing on the decision by the Board of Patent Appeals and Interferences in the pending appeal.

(3) Status of Claims

Claims 21-24, 27-31, and 34-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,526,575 to McCoy et al. (“McCoy”) in view of U.S. Patent No. 5,099,319 to Esch et al. (“Esch”).

Claims 25, 32, and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McCoy and Esch, in view of U.S. Patent No. 5,920,700 to Gordon et al. (“Gordon”).

Claims 26, 33, and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McCoy, Esch, and Gordon, in view of U.S. Patent No. 6,253,079 to Valentine et al. (“Valentine”).

Claims 21-40 are being appealed.

(4) Status of Amendments

There are no unentered amendments.

(5) Summary of Claimed Subject Matter

Although broadcasters have sophisticated systems for inserting national commercials into a program feed, including integrated traffic and billing systems, there are numerous obstacles to implementing a system for inserting local commercials associated with small markets into a national program feed distributed by satellite. Specification, page 1, lines 12-15. Managing tapes with advertisements for local commercials and inserting the advertisements properly into a program feed is a complex undertaking not well-suited for smaller operators, especially for channels with smaller audiences in smaller markets. Further, a quality broadcast involves more than good

program material; the broadcast must provide seamless insertion of national and local advertisements, promotions, and station identifications. Equally important, also, is the ability to maintain the integrity of the national television programming. Therefore, a centralized control of a channel's programming (or playout) is required to prevent local affiliates from tampering with the national television programming. Specification, page 2, lines 6-13.

Accordingly, independent claim 1 recites a method for controlling insertion of a plurality of local spots into a program feed through a central site server located at a central control site. The method includes, prior to playout of the program feed, distributing the plurality of local spots from the central site server to one or more remote site servers located at one or more corresponding remote sites relative to the central control site (specification, page 4, lines 13-17; page 6, lines 7-8); sending a plurality of control parameters from the central site server to each of the one or more remote site servers (specification, page 8, lines 16-20); and transmitting the program feed from the central site server to each of the one or more remote site servers (specification, page 5, lines 2-3). The method further includes each of the remote site servers automatically switching between playout of the program feed and playout of each local spot in accordance with the plurality of control parameters received from the central site server located at the central control site. Specification, page 5, lines 15-22.

Independent claim 28 recites a computer program product tangibly stored on a computer readable medium for controlling insertion of a plurality of local spots into a program feed through a central site server located at a central control site. The computer program product comprises instructions to cause a programmable processor to distribute

the plurality of local spots from the central site server to one or more remote site servers located at one or more corresponding remote sites relative to the central control site prior to playout of the program feed (specification, page 4, lines 13-17; page 6, lines 7-8); send a plurality of control parameters from the central site server to each of the one or more remote site servers (specification, page 8, lines 16-20); and transmit the program feed from the central site server to each of the one or more remote site servers (specification, page 5, lines 2-3). The computer program product further comprises instructions for each of the remote site servers to automatically switch between playout of the program feed and playout of each local spot in accordance with the plurality of control parameters received from the central site server located at the central control site. Specification, page 5, lines 15-22.

Independent claim 35 recites a digital media distributor (DMD) for controlling insertion of a plurality of local spots into a program feed through a central site server located at a central control site. The digital media distributor (DMD) comprises a central site server to distribute the plurality of local spots to one or more remote site servers located at one or more corresponding remote sites relative to the central control site. Specification, page 5, lines 1-6; FIG. 1. The plurality of local spots are transmitted from the central site server prior to playout of the program feed. Specification, page 6, lines 7-8. The central site server further sends a plurality of control parameters to each of the one or more remote site servers and transmits the program feed to each of the one or more remote site servers. Specification, page 6 lines 8-10; page 8, lines 19-20. Each of the one or more remote site servers automatically switches between playout of the program feed and playout of each local spot in accordance with the plurality of control parameters

received from the central site server located at the central control site. Specification, page 5, lines 15-22.

(6) Grounds of Rejection to be Reviewed on Appeal

Appellant requests review as to claims 21-24, 27-31, and 34-38 and their rejection under 35 U.S.C. § 103(a) as being unpatentable over McCoy in view of Esch.

(7) Argument

Claims 21-24, 27-31, and 34-38 are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over McCoy in view of Esch.

Claim 21 recites a method for controlling insertion of a plurality of local spots into a program feed through a central site server located at a central control site. The method includes distributing the plurality of local spots from the central site server to one or more remote site servers prior to playout of the program feed. The method further includes sending a plurality of control parameters from the central site server to each of the one or more remote site servers. The program feed is transmitted from the central site server to each of the one or more remote site servers, and each of the remote site servers automatically switches between playout of the program feed and playout of each local spot in accordance with the plurality of control parameters received from the central site server.

A potential advantage of such a method is that the integrity of a (national) television program feed can be maintained through centralized control of a channel's programming (playout) through a central control site, which also prevents local affiliates from tampering with the programming (see specification, page 2, lines 11-13).

A. McCoy Fails To Disclose Distributing a Plurality of Local Spots From a Central Site Server To One or More Remote Site Servers Prior To Playout of a Program Feed

McCoy discloses a multimedia distribution and broadcast system for transmitting multimedia contents and control information from a central uplink facility 102 to a remote downlink facility 106 via a satellite 104 (col. 4, ll. 9-15; FIG. 1). McCoy, however, fails to disclose distributing a plurality of local spots from a central site server to one or more remote site servers prior to playout of a program feed (emphasis added).

The Examiner recognizes that McCoy fails to disclose distributing a plurality of local spots from a central site server to one or more remote site servers prior to playout of a program feed. The Examiner, however, asserts that these limitations, as well as further limitations absent from McCoy and recited in claim 21, are disclosed by Esch.

B. Esch Fails To Disclose Distributing a Plurality of Local Spots From a Central Site Server To One or More Remote Site Servers Prior To Playout of a Program Feed

Esch discloses a satellite advertising distribution system that allows customizing the advertisement at each ground terminal (col. 1, ll. 6-9). In particular, Esch discloses an advertising delivery network that distributes television commercials from a central site through a satellite network to remote sites (col. 3, ll. 15-20, FIG. 1).

The commercials distributed to the remote site from the central site, however, are not local spots. Instead, the commercials distributed from Esch's central site are standard (e.g., national commercials). The standard commercials sent from Esch's central site are not customized until the commercials reach a remote site where a communications

processor customizes the commercials through tagging (col. 4, ll. 63-66). Each of Esch's remote sites includes a video tape recorder 107 that provides for insertion of locally produced content (col. 9, ll. 16-19). Such locally originated content can be combined with a customized commercial as appropriate (col. 1, ll. 45-49). Esch fails to disclose that the locally produced content is received from the central site. Accordingly, Esch (as with McCoy) fails to disclose distributing a plurality of local spots from a central site server to one or more remote site servers prior to playout of a program feed, as required by claim 21. Further, because Esch permits locally originated content to be combined with a commercial at a remote site, the integrity of a (national) television program feed cannot be maintained through centralized control, which is an advantage of Applicant's invention as claimed.

C. The claim has limitations not taught by either reference

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Neither McCoy nor Esch (either alone or in combination) discloses distributing a plurality of local spots from a central site server to one or more remote site servers prior to playout of a program feed. Consequently, the combination of McCoy and Esch cannot render claim 21 obvious.

D. *No Motivation To Combine References*

Prior art references must be considered in their entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983).

Applicant respectfully submits that there is no motivation to combine McCoy and Esch. Even assuming *arguendo* that Esch discloses distributing a plurality of local spots from a central site server to one or more remote site servers prior to playout of a program feed (which Applicant does not concede), McCoy clearly teaches away from doing such, as discussed above. McCoy clearly discloses local media 426 that is not received from a central site. Accordingly, Applicant respectfully submits that there is no motivation to combine McCoy and Esch.

The Examiner asserts that “the mere fact that McCoy teaches alternative means for receiving local media does not preclude modifying McCoy by receiving local media from other sources, such as taught by Esch”. Applicant respectfully disagrees.

McCoy teaches that while multimedia distribution systems are welcomed by (local) cable operators (col. 1, ll. 35-41), cable operators seek more sophisticated scheduling capabilities for promotions in order to maximize returns from their advertisements (col. 1, ll. 52-56). Further, McCoy teaches that cable operators have limited ways to input their preferences that determine the types of promotions to be broadcast to their particular subscribers (col. 1, ll. 63-66). To remedy such problems, McCoy teaches having local commercials entered locally by each cable operator – i.e., McCoy teaches that local media 426 can be combined with data received from a central uplink facility to permit advertising for local retailers or television programs to be viewed

by customers of a cable operator (col. 13, ll. 47-56). McCoy teaches away from distribution of local media through a central site server.

E. Other Independent Claims

Claims 28 and 35 each incorporates limitations similar to those of claim 21. Claims 28 and 35 (and the claims that depend therefrom) are also allowable over the references cited above for reasons corresponding to those set forth with respect to claim 21.

Conclusion

Neither McCoy nor Esch (either alone or in combination) discloses distributing a plurality of local spots from a central site server to one or more remote site servers prior to playout of a program feed. Appellant, therefore, respectfully submits that independent claims 21, 28, and 35 (and the claims that depend therefrom) are not properly rejected under § 103.

Please charge any fee that may be necessary for the continued pendency of this application to Deposit Account No. 09-0460 (IBM Corporation).

Respectfully submitted,
SAWYER LAW GROUP LLP

June 26, 2007
Date

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Appendix of Claims

1-20. (Cancelled)

21. (Previously Presented) A method for controlling insertion of a plurality of local spots into a program feed through a central site server located at a central control site, the method comprising:

prior to playout of the program feed, distributing the plurality of local spots from the central site server to one or more remote site servers located at one or more corresponding remote sites relative to the central control site;

sending a plurality of control parameters from the central site server to each of the one or more remote site servers;

transmitting the program feed from the central site server to each of the one or more remote site servers; and

each of the remote site servers automatically switching between playout of the program feed and playout of each local spot in accordance with the plurality of control parameters received from the central site server located at the central control site.

22. (Previously Presented) The method of claim 21, wherein:

the program feed comprises one of a cable feed or a network feed; and

each local spot comprises one of local advertising or a local announcement.

23. (Previously Presented) The method of claim 22, wherein the central site server is in communication with each of the remote site servers through a distribution network.

24. (Previously Presented) The method of claim 23, wherein one or more of the remote sites servers comprises a video server.

25. (Previously Presented) The method of claim 23, wherein sending a plurality of control parameters includes sending uplink parameters, scheduler parameters, and storage parameters for controlling distribution of the program feed and the plurality of local spots from the central site server to each of the one or more remote site servers through the distribution network.

26. (Previously Presented) The method of claim 25, wherein:

the uplink parameters include one or more of an uplink broadcast transmission, an uplink forward, or an uplink look-ahead;

the scheduler parameters include one or more of a transmission lookahead window, a staging lookahead window, a station in a box (SIB) playtime lookahead window, an SIB spot high water mark, an SIB spot low water mark, a searchable length of transmit queue, a searchable length of a staging queue, a playlist transmission lookahead, a minimum transmit time, an SIB timeout limit, a history retention period; and

the storage parameters include one or more of playlist entries, purgelist entries, a playlist retention period, a purgelist retention, a dead on arrival (DOA) retention period.

27. (Previously Presented) The method of claim 21, further comprising receiving user input adjusting the control parameters through a graphical user interface (GUI) input mechanism associated with the central site server.

28. (Previously Presented) A computer program product tangibly stored on a computer readable medium for controlling insertion of a plurality of local spots into a program feed through a central site server located at a central control site, the product comprising instructions to cause a programmable processor to:

prior to playout of the program feed, distribute the plurality of local spots from the central site server to one or more remote site servers located at one or more corresponding remote sites relative to the central control site;

send a plurality of control parameters from the central site server to each of the one or more remote site servers; and

transmit the program feed from the central site server to each of the one or more remote site servers,

wherein the product further comprises instructions for each of the remote site servers to automatically switch between playout of the program feed and playout of each local spot in accordance with the plurality of control parameters received from the central site server located at the central control site.

29. (Previously Presented) The computer program product of claim 28, wherein:

the program feed comprises one of a cable feed or a network feed; and

each local spot comprises one of local advertising or a local announcement.

30. (Previously Presented) The computer program product of claim 29, wherein the central site server is in communication with each of the remote site servers through a distribution network.

31. (Previously Presented) The computer program product of claim 30, wherein one or more of the remote sites servers comprises a video server.

32. (Previously Presented) The computer program product of claim 30, wherein the instructions to send a plurality of control parameters include instructions to send uplink parameters, scheduler parameters, and storage parameters for controlling distribution of the program feed and the plurality of local spots from the central site server to each of the one or more remote site servers through the distribution network.

33. (Previously Presented) The computer program product of claim 32, wherein:

the uplink parameters include one or more of an uplink broadcast transmission, an uplink forward, or an uplink look-ahead;

the scheduler parameters include one or more of a transmission lookahead window, a staging lookahead window, a station in a box (SIB) playtime lookahead window, an SIB spot high water mark, an SIB spot low water mark, a searchable length of transmit queue, a searchable length of a staging queue, a playlist transmission lookahead, a minimum transmit time, an SIB timeout limit, a history retention period; and

the storage parameters include one or more of playlist entries, purgelist entries, a playlist retention period, a purgelist retention, a dead on arrival (DOA) retention period.

34. (Previously Presented) The computer program product of claim 28, further comprising instructions to receive user input adjusting the control parameters through a graphical user interface (GUI) input mechanism associated with the central site server.

35. (Previously Presented) A digital media distributor (DMD) for controlling insertion of a plurality of local spots into a program feed through a central site server located at a central control site, the digital media distributor (DMD) comprising:

a central site server to distribute the plurality of local spots to one or more remote site servers located at one or more corresponding remote sites relative to the central control site, the plurality of local spots being transmitted from the central site server prior to playout of the program feed, the central site server to further send a plurality of control parameters to each of the one or more remote site servers and transmit the program feed to each of the one or more remote site servers; and

each of the one or more remote site servers to automatically switch between playout of the program feed and playout of each local spot in accordance with the plurality of control parameters received from the central site server located at the central control site.

36. (Previously Presented) The digital media distributor (DMD) of claim 35, wherein:

the program feed comprises one of a cable feed or a network feed; and
each local spot comprises one of local advertising or a local announcement.

37. (Previously Presented) The digital media distributor (DMD) of claim 36, further comprising a distribution network through which the central site server is in communication with each of the remote site servers.

38. (Previously Presented) The digital media distributor (DMD) of claim 37, wherein each of the one or more of the remote sites servers includes a video switch card to switch between playout of the program feed and playout of each local spot.

39. (Previously Presented) The digital media distributor (DMD) of claim 37, wherein the plurality of control parameters includes uplink parameters, scheduler parameters, and storage parameters for controlling distribution of the program feed and the plurality of local spots from the central site server to each of the one or more remote site servers through the distribution network.

40. (Previously Presented) The digital media distributor (DMD) of claim 39, wherein:

the uplink parameters include one or more of an uplink broadcast transmission, an uplink forward, or an uplink look-ahead;

the scheduler parameters include one or more of a transmission lookahead window, a staging lookahead window, a station in a box (SIB) playtime lookahead

window, an SIB spot high water mark, an SIB spot low water mark, a searchable length of transmit queue, a searchable length of a staging queue, a playlist transmission lookahead, a minimum transmit time, an SIB timeout limit, a history retention period; and the storage parameters include one or more of playlist entries, purgelist entries, a playlist retention period, a purgelist retention, a dead on arrival (DOA) retention period.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None